

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NOLAN HALL,

Defendant-Appellant.

UNPUBLISHED

August 9, 2007

No. 269990

Calhoun Circuit Court

LC No. 03-002425-FC

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of 32 to 50 years in prison imposed on remand after his jury trial conviction of second-degree murder, MCL 750.317. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Philbert Galliard was shot and killed on March 6, 1982. Galliard was shot seven times, and had lethal wounds to the heart and lungs. The prosecution theory was that defendant shot Galliard to get money back that he lost to Galliard while gambling. Defendant was convicted on December 11, 2003, following a jury trial. On January 14, 2004, the trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 40 to 60 years in prison.

Defendant appealed, and in *People v Hall*, unpublished per curiam opinion of the Court of Appeals, issued November 29, 2005 (Docket No. 253627), another panel of this Court affirmed defendant's conviction, but remanded for resentencing on the ground that the trial court erred in sentencing defendant as a fourth habitual offender because that conviction had not been obtained in accordance with the applicable version of MCL 769.13. *Id.*, slip op at 6. This Court further ordered that, "[o]n remand, the trial court is to impose a sentence that is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990)." *Id.*, slip op at 7. Our Supreme Court denied defendant's application for leave to appeal. *People v Hall*, 475 Mich 885 (2006).

On remand, the trial court acknowledged that it could not resentence defendant as a habitual offender pursuant to this Court's decision, but noted that defendant's extensive criminal history would play a role in its sentencing decision. The trial court determined that the circumstances of the offense involved an element of brutality, and that there were "not too many" mitigating circumstances surrounding the offense. The trial court sentenced defendant to 32 to 50 years in prison, with credit for 1,068 days served.

Defendant now argues that, because the trial court could not sentence him as a habitual offender on resentencing, the judicial sentencing guidelines applied to this case based on the date of the offense. Defendant contends that the trial court did not resolve the issue of whether the judicial guidelines applied, did not discuss the range that would have been appropriate under those guidelines, and did not indicate that he was departing from the suggested range. Defendant also argues that his sentence is disproportionately severe and constitutes an abuse of discretion.

We affirm. In 1983, our Supreme Court crafted guidelines and promulgated them pursuant to Administrative Order No. 1983-3, 417 Mich cxxi (1983). *People v Babcock*, 469 Mich 247, 254; 666 NW2d 231 (2003). Under that order, beginning on May 1, 1983, judges were invited to use the guidelines, but were not required to do so. AO 1983-3; *People v Potts*, 436 Mich 295, 298; 461 NW2d 647 (1990). The judicial sentencing guidelines became mandatory pursuant to Administrative Order No. 1984-1, 418 Mich lxxx (1984), commencing on March 1, 1984. See *Potts*, *supra* at 298-299. There were no guidelines in place, mandatory or optional, in 1982. Consequently, we find defendant's contention that the trial court should have scored the guidelines, or articulated a reason to depart from them, to be without merit. Instead, we find that, consistent with this Court's remand order, the trial court correctly utilized the *Milbourn* standard when determining a proportionate sentence for defendant. See *Milbourn*, *supra* at 669-670.

We review issues of sentence proportionality for an abuse of discretion. *Id.* at 653-654. Defendant cannot demonstrate that his sentence is disproportionate. Murder is arguably the most serious offense an individual can commit. The victim was treated with relative brutality, in that he sustained seven gunshot wounds. Nor has defendant shown any mitigating circumstances surrounding the killing, which seems to have been perpetrated simply for monetary gain.

Moreover, the sentence imposed is appropriate to defendant's circumstances. The trial court's focus on defendant's criminal history as an aggravating factor was proper under the circumstances. *People v Oliver*, 242 Mich App 92, 98; 617 NW2d 721 (2000). Defendant's presentence investigation report indicates that defendant had previously been convicted of four felonies and thirteen misdemeanors, including two assault and battery convictions and one domestic violence conviction. Defendant had a substance abuse problem, and a number of his prior convictions were for drug-related offenses. Defendant's criminal history underscores his inability to conform his conduct to the rules of society and supports the trial court's decision. See *People v Hansford*, 454 Mich 320, 326; 562 NW2d 460 (1997). Under the circumstances, we find that the trial court imposed a proportionate sentence.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly